

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THE 30TH DAY OF MAY 1998

BEFORE:

THE HON'BLE MR.JUSTICE H.RANGAVITTALACHAR

H.R.R.P.NO.815/1994 + 816/94

HRRP 815/94
T.Ramachandra,
s/o T.Krishnappa,
Shop No.14,
Premises No.1067,
Triveni Road, Gokul
I Stage, II Phase,
Bangalore-4.

HRRP 816/94
1. N.Balaraman
2. Sri N.Pandyan
s/o M.Narayanaswamy,
majors, shop No.1,
Photo Studio,
BDA No.1057,
Triveni Road,
Gokul I Stage,
II Phase,
Gokul Post,
Bangalore-54.

Petitioners

(By Smt.Bhanu Ravinder)

-vs-

Dr.C.Pratap Kumar,
s/o late C.M.Mehta,
major, r/o No.142,
Coconut Avenue Road,
Bangalore-3. Respondent
(By Sri K.C.Mehta)

HRRP Nos.815 and 816 of 1994 are filed against the order dated 14.2.1994 passed in HRC Nos.1610/91 and 1628/91 on the file of the Chief Judge of small Causes, Bangalore.

These revision petitions coming on for hearing this day, the court made the following:

ORDER

These two revision petitions arise out of a common order passed by the Chief Judge, Bangalore in HRC Nos.1610/91 and 1628/91 ordering eviction of the petitioners in both the cases from a shop premises measuring 8' x 10'.

The brief facts of the case are that the premises No.1067 situate at Triveni Road, Gokul I Stage, Bangalore consists of 4 shops in all. This building belongs to Dr.C.Pratap Kumar. The said Doctor Pratap Kumar has been using the central 2 shops for running a Poly Clinic under the name and style of 'Ganesh Poly Clinic'. The other 2 rooms one on the extreme eastern side and on the other extreme western side are in occupation of the tenant T.Ramachandra and N.Balaraman. The premises in occupation of T.Ramachandra measures 8' x 10' and that of the latter measures 8' x 12'. The tenant T.Ramachandra is running a petty provision shop in the said shop whereas the other tenant has established a photo studio. The landlord Dr.Pratap filed an eviction petition against the tenants T.Ramachandra and N.Balaraman.

H.R.✓

The landlord filed the eviction petition on various grounds more important of them being that the premises in occupation of the tenant is required for expanding the Poly Clinic by putting up a Pathological Laboratory and also for providing space for diagnostic centre as at present the accommodation is not sufficient for the said purpose. Therefore it is required reasonably and bonafide for his own use and occupation. The tenants resisted the petition. The learned Chief Judge held an enquiry and on the basis of the evidence adduced by the parties before him rejected the eviction petition filed by the landlord under Section 21 (1) (p) and (f) of the Karnataka Rent Control Act (for short 'the Act'). He however allowed the eviction petition under Section 21 (1) (h) of the Act. This order is challenged by both the tenants in these revision petitions.

Smt. Bhanu Ravinder learned counsel appearing for the tenants in both the petitions assailed the order of the learned Judge on 3 grounds:

H.R.V

1. That by virtue of a Government Order, the petitioner was prohibited from running any Poly Clinic. Therefore he could not have maintained the eviction petition.

2. That the learned Judge totally misdirected himself in taking note of the hardship of the Doctors working in the Poly Clinic whereas he should have considered only the hardship of the petitioner.

3. Having regard to the material on record the learned Judge should have held that the petition lacks bonafides.

In my opinion, none of the grounds have substance. In so far as the first contention is concerned by reading of the Government Order Exhibit P.13 it is not possible to spell out a total prohibition. Besides if the Doctor violates the service conditions it was for the employer to take action against him. By a reading of Exhibit P.13, it is not possible to spell out the total ban for a Government Doctor to run a Poly Clinic. Secondly the facts of the case being that the

H.R.✓

landlord had submitted an application seeking to voluntarily retire from service it is now transpired, that he has ^{also} retired from service. ^{Even otherwise} AS - rightly held by the learned Judge if the landlord violates the terms and conditions of the service it is for the employer to take action. That cannot be a ground to assess the bonafides in an enquiry under the Rent Control proceedings.

In so far as the second contention raised by the petitioner is concerned, the Doctors who have been working in the Poly Clinic cannot be held to have been working in their own right or have ^{any} ~~every~~ right in the premises.

By a reading of the eviction petition and the evidence of PW.1 it is clear that the schedule premises is owned by the landlord. He has been running a poly clinic and the Doctors are only assisting him. The learned Judge has considered the hardship that is likely to be caused for the Poly Clinic run by the landlord. While so considering he has held that for want of space, the patients cannot be properly attended to by the Doctor in their respective departments and working

H.R. ✓

for the landlord in the Poly Clinic belonging to the landlord. Such a consideration cannot be held to be irrelevant in the facts and circumstances of this case.

In so far as the last contention is concerned, the learned counsel submitted that admittedly the landlord is running another Nursing Home at Malleswaram. The landlord has deposed that in the same hours he attends both the Nursing Homes which is humanly improbable. The evidence cannot be scrutinised in a microscopic way. It has to be taken in a broader sense. The landlord's evidence must be read that he has been attending both the Nursing Homes that is the Poly Clinic and the Malleswaran Nursing Home; The learned Judge has in detail discussed the evidence of the landlord and 4 other witnesses examined on this behalf and also taken into consideration the evidence of the tenant in coming to the conclusion that at present the poly clinic run by them has only 2 rooms measuring 3' x 10' and it is providing services to the patients a number of Doctors necessarily have to attend. Under the

H. R. v

circumstance the need for the 2 rooms is to be held as genuine. Therefore the finding of the learned Judge cannot be faulted.

At this stage the learned counsel appearing for the tenants submitted that one of the tenant is running a petty provision shop and the other has established a photo studio. Except the said business, they do not have any other source of income. Therefore they prayed for 2 years time to vacate the premises. The learned counsel appearing for the landlord opposed for grant of time beyond one and a half years. Having regard to the facts and circumstances of this case, the tenants are granted 2 years time to quit and deliver vacant possession of the premises subject to the following conditions:

1. That both the petitioners shall file an affidavit undertaking to voluntarily vacate the premises.

2. The affidavit shall be filed within 2 weeks from today after serving a copy on the other side.

H.RV

3. That they shall pay the monthly rents regularly as and when they fall due without default.

4. That they shall not sub-let or sub-lease the premises.

Sd/-
JUDGE

TS